

JUL 28 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

JOSE LUIS CISNEROS-LEMUS,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-72868

Agency No. A92-374-674

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006 ^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Jose Luis Cisneros-Lemus, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") order denying his motion to reopen removal

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

proceedings. To the extent we have jurisdiction, it is conferred by 8 U.S.C.

§ 1252. We deny in part and dismiss in part the petition for review.

The agency did not abuse its discretion by denying Cisneros-Lemus' motion to reopen filed four years after he was ordered removed, where it was deprived of jurisdiction to consider the motion as a result of Cisneros-Lemus's departure from the United States subject to a removal order. *See* 8 U.S.C. § 1003.23(b) (explaining that "[a] motion to reopen must be filed within 90 days of the date of entry of a final administrative order of removal" and that "[a] motion to reopen . . . shall not be made by or on behalf of a person who is the subject of removal . . . subsequent to his or her departure from the United States.").

We lack jurisdiction to review the agency's decision not to exercise its sua sponte authority to reopen proceedings. *See Abassi v. INS*, 305 F.3d 1028, 1032 (9th Cir. 2002).

Cisneros-Lemus' remaining contentions lack merit.

We do not consider Cisneros-Lemus' contentions raised for the first time in his reply brief. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.